IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 26.10.2006

Coram:

The Hon'ble Mr.JUSTICE S.RAJESWARAN

C.R.P.(NPD) No.1170 of 2003

Chellappa .. Petitioner

vs.

1.J.Jagadeesa Chettiar (1st Respondent/Decree holder Claimant/third party)

2.Balammal
3.Rajendran
4.Kannan
5.Gomathi
6.Akalya
7.Geetha
8.Mohan

.. Respondents 2 to 8/Judgment debtors

Revision Petition filed u/s 115 CPC against the order dated 20.3.2003, passed in E.A.No.4843/1999 in E.P.No.60/1997 in O.S.No.2932/1994, on the file of the X Asst. City Civil Court, Chennai.

For Petitioner : Mr.K.Ashok Chakravarthy
For Respondents : No Appearance

ORDER:

This Revision Petition has been filed against the order dated 20.3.2003, passed in E.A.No.4843/1999 in E.P.No.60/1997 in O.S.No.2932/1994, on the file of the X Asst. City Civil Court, Chennai.

2. The decree holder in O.S.No.2932/1994 is the revision petitioner. He is aggrieved by the order of the execution court in E.A.No.4843/1999 filed by the 1st respondent herein/3rd party.

3. E.A.No.4843/1999 was filed by the 1st respondent as third party under Order 21 Rule 58 C.P.C. praying to pass an order of discharge attachment of warrant issued against the property namely, house and ground bearing Door No.58-A, Venkatesabakthan Street, Perumalpet, Chennai. The execution court by order dated 20.3.2003 allowed the said application and aggrieved by the same, the above

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Civil Revision Petition has been filed under Sec.115 of C.P.C.

4. Heard the learned counsel for the petitioner. Though notice has been served on the respondents, there is no representation on their behalf. I have also gone through the documents filed in support of the submissions of the learned counsel for the petitioner.

5. The 1st respondent/3rd party in E.A.No.4843/1999 stated that the property bearing No.58-A, Venkatesabakthan Street, Perumalpet, Chennai mentioned in the E.P. Schedule by the revision petitioner herein is his absolute property having purchased the same on 11.5.1994 under the sale deed registered as document No.1279/1994 on the file of the Sub-Registrar, Purasawalkam from respondents 2 to 8 herein.

6. The revision petitioner filed E.P.No.60/1997 for attachment and sale of the property mentioned above mentioning that the property belonged to respondents 2 to 8 herein who are judgment debtors in E.P.No.60/1997.

7. According to the 1st respondent/3rd party that suppressing the fact that the property was purchased by him, the petitioner/decree holder obtained an order of attachment and therefore he filed E.A.No.4843/1999 for an order of discharge attachment of warrant issued against the property.

8. The revision petitioner/decree holder resisted the application by stating that the sale is collusive one and the sale made in favour of 1st respondent/3rd party is hit by doctrine of lis pendens contained in Sec.52 of the Transfer of Property Act.

9. The execution court held that Sec.52 of the Transfer of Property Act will not apply and therefore the decree holder has filed the above Civil Revision Petition challenging the order of execution court.

10. The only question that arises for consideration is whether the sale executed by respondents 2 to 8 herein in favour of the 1st respondent herein on 11.5.1994 when the suit is pending is hit by Sec.52 of the Transfer of Property Act.

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11. Sec.52 of the Transfer of Property Act reads as under:

> "52. Transfer of property pending suit relating thereto:- During the pendency in any Court (having authority within the limits of India excluding the State of Jammu and Kashmir or established beyond such limits) by (the Central Government) of (any) suit or proceedings which is not collusive and in which any right to immovable

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property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceedings so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose.

(Explanation:- For the purpose of this section, the pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceeding in a Court of competent jurisdiction, and to continue until the suit or proceeding has been disposed of by a final decree or order and complete satisfaction or discharge of such decree or order has been obtained, or has become unobtainable by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in force.)"

12. Sec.52 of the Act will come into operation when a property is transferred pending a suit in which any right to immovable property is directly or specifically in question. Therefore what is important is a suit should be pending, pending suit an immovable property is transferred and the suit is one in which any right to immovable property is directly and specifically in question.

13. O.S.No.2932/1994 was filed by the revision petitioner for recovering a sum of Rs.64,057/- under Order 37 Rule 1 CPC and the same was decreed as prayed for. If that being so, the suit filed by the revision petitioner is a simple money suit in which the right to immovable property namely, house, ground and premises bearing new No.58-A, Venkatesabakthan Street, Perumalpet, Chennai was not directly and specifically in question. Hence Section 52 of the Transfer of Property Act will not apply in the facts and circumstances of the case.

14. The execution court has gone into the matter elaborately and correctly rendered a finding that the doctrine of lis pendens is not applicable to the case.

15. I do not find any illegality nor infirmity in the order passed by the execution court warranting interference by this court under Sec.115 of CPC.

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16. In the result, the C.R.P. is dismissed. No costs. C.M.P.No.12287/2003 is also dismissed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

sks

To
1 The Registrar, City Civil Court, Chennai.104.

2 The X Assistant Judge, City Civil Court,
Chennai

3 The Record Keeper, VR Section,
High Court, Madras 104.

+ 1 CC to MR. K. ASHOK CHAKRAVARTHY Advocate SR No. 49850

JRG (CO)
JV / 27.11.2006

C.R.P.(NPD)1170/03.

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